The proper course for every aggrieved taxpayer is to pay his tax and present his arguments against the assessment made upon him before the Board of Review."

It will be observed that the provisions of the Singapore Income Tax Ordinance are virtually identical with the corresponding provisions of the Income Tax Ordinance in the States of Malaya (except that they differ in the numbering of the sections). The other case in point is the *Comptroller of Income Tax* v. *R.S.T.*[3] where Tan Ah Tah J. (as he then was) observed:—

"It was contended by counsel for the defendant that certain triable issues had been raised and that therefore the defendant should have been given leave to defend his action. One of these issues was said to be whether or not the sums on which tax is now claimed represent chargeable income which is taxable or capital assets not subject to taxation. On this point it is sufficient to say that it is eminently a matter for the determination of the Board of Review which was constituted under the Income Tax Ordinance to determine, *inter alia*, question of that very nature.

Another point raised on behalf of the defendant concerned the tax claimed for the year of assessment, 1951. It was said that if the amounts received by the defendant could be considered to be income, such income was exempt from tax as it arose from sources outside Singapore and was received by the defendant while he was in Singapore for some temporary purpose. This again is a matter for the determination of the Board of Review."

Having considered all aspects of the case, I am satisfied that there is no question of fact or law which ought to be tried or argued in this case; and I am further satisfied that the defendant company has not shown that it has a *bona fide* defence. If the plaintiff is precluded from the application for summary judgment, it would only mean unnecessary prolongment of the case, resulting in a waste of time and added expense for the defendant company. This would be an opportune juncture to quote a familiar *dicta* of Halsbury L.C. in *Jacobs* v. *Booth's Distillery Co.*[4]

"People do not seem to understand that the effect of O. 14 is that, upon the allegation of the one side or the other, a man is not to be permitted to defend himself in a court; that his rights are not to be litigated at all. There are some things too plain for argument; and where there were pleas put in simply for the purpose of delay, which only added to the expense, and where it had not been in aid of justice that such things should continue, O. 14 was intended to put an end to that state of things, and to prevent sham defences from defeating the rights of the parties by delay, and at the same time causing great loss to the plaintiffs who were endeavouring to enforce their rights."

A certificate under section 86(3) of the Income Tax Ordinance has been produced, and I accordingly allow the plaintiff's application in terms of the summons in chambers.

Application allowed.

Solicitors: *Chung & Huang.*

RE LEE AH MENG

[O.C.J. (Raja Azlan Shah J.) April 3, 1969]

[K.L. — Originating Motion No. 8 of 1969]

Election — Expenses — Omission to transmit return of, within required time — Illegal practice — Reasonable excuse — Power of court to allow authorised excuse — Responsibility of election agent — Election Offences Ordinance, 1954, s. 30(1).

This was an application for an authorised excuse for an omission to transmit a return relating to election expenses within the required time. In support of his application the applicant stated that he had left the preparation of the return to his election agent who had been unable to complete the return in time because of pre-occupation with another election.

Held: (1) the grant for an authorised excuse is solely discretionary and not arbitrary; the discretion must be exercised in accordance with sound and reasonable judicial principles;

(2) the applicant in this case had shown by his affidavit that the failure to transmit the return was not by reason of any want of good faith on his part but due to the inadvertence of his agent and therefore the court would relieve the applicant and allow him to transmit the return after the required time.

Cases referred to:—

(1) *Ling See Lock* v. *Supervisor of Elections & Ors.* [1965] 2 M.L.J. 73.

(2) *Ex Parte Polson & Anor.* (1923), 39 T.L.R. 231.

ORIGINATING MOTION.

K.L. Devasar for the applicant.

Kamarul Ariffin for the successful candidate.

Raja Azlan Shah J. (delivering oral judgment): This is an *ex parte* application by way of originating motion by Lee Ah Meng for an authorised excuse for an omission to transmit a return relating to election expenses within the required time. As required by sub-section (1) of section 30 of the Election Offences Ordinance, 1954, notice of the said application was served on the successful candidate Enche Musa bin Hitam, the returning officer and a voter of the constituency in which the election was held (see also *Ling See Lock* v. *Supervisor of Elections & Ors.*[1]). Sub-section (1) of section 23 of the Ordinance requires that within 31 days after the date of publication of the result of the election in the *Gazette* the election agent shall deposit with the proper officer — in this case the returning officer — a true return in the manner prescribed in the sub-section. Sub-section (2) requires a statement on oath by the candidate and his agent to accompany the said return. Failure to comply with the statutory provisions constitutes an illegal practice. But if the candidate applies to the election judge and shows that the failure to transmit such return and declarations, or any of them, or any part thereof, or any error or false statement therein, has arisen by reason

of his illness, or of the absence, death, illness, negligence or misconduct of his election agent or of any clerk or officer of such agent, or by reason of inadvertence or of any reasonable cause of a like nature, and not by reason of any want of good faith on the part of the applicant, the court may make an order for allowing the authorised excuse for the failure to transmit such return and statements (section 30(1)(a)).

In the present case the applicant was the unsuccessful candidate at the parliamentary bye-election for Segamat Utara, Johore held on 19th October, 1968. He had an election agent, Lim Kit Siong, who was required to transmit the return to the returning officer, Segamat Utara on or before 15th December, 1968. It was the first time the applicant stood for election. In his affidavit he declared that he had no experience of election campaigns or of submitting election expenses. The said agent was then pre-occupied with the State of Selangor bye-election for Serdang between 28th November, 1968 to 28th December, 1968 and he had left the preparation of the return to another person. That person had prepared the said return but not in proper form because the vouchers attached thereto were not itemised. It was first transmitted to the returning officer on 23rd December, 1968 but was naturally rejected, was again transmitted on 29th December, 1968 but was not in proper form and was finally transmitted on 29th March, 1969.

The grant for an authorised excuse is solely discretionary and not arbitrary; the discretion must be exercised in accordance with sound and reasonable judicial principles. I am therefore not fettered by any judicial decisions. The cases providing for a guide to courts to exercise the discretion one way or other are only illustrative; they are not intended to be exhaustive. In other words, each case must depend on its own merits. The application in the present case is made by the unsuccessful candidate and not by the agent. It may well be that different considerations would apply in the case of the agent but for the purpose of the present application I express the view that the applicant has shown by his affidavit that the failure to transmit the return was not by reason of any want of good faith on his part but due to inadvertence of his agent. I therefore propose to relieve the applicant and allow him to transmit the said return on 29th March, 1969.

Enche Ariffin for the successful candidate has quite properly referred me to a case which is pertinent and which may, if I may say so, serve as a reminder to future election agents of their duties under the election law. If I may echo the words of Sanky J. in *Ex parte Polson & Anor.*[2]:—

"A person of no skill and knowledge could not obtain a post as election agent and neglect his duties altogether so as gravely to imperil the success of the candidate or that candidate's right to sit in Parliament, and then come to the court and obtain relief because he had acted without any corrupt motive. I hope that no man of that sort would be employed as an agent in future."

Order accordingly.

Application granted.

Solicitors: *K.L. Devasar & Co.; Ariffin & Ooi.*

LIM OW GOIK & ANOR. v. SUNGEI MERAH BUS COMPANY LTD.

[O.C.J. (B.T.H. Lee J.) April 9, 1969]

[Sibu — Civil Application No. 1 of 1968]

Companies — Transfer of shares — Registration — Application for rectification of register — Private company — Refusal by directors — Whether proper exercise of discretion by directors — Companies Act, 1965, s. 162.

In this case the second applicant had sold 15 shares in the company to the first applicant and sent a notice to the directors. The directors informed the second applicant that his application for disposing of his shares to the first applicant could not be approved, but it could be considered for approval provided he gave the pre-emption right equally to all the existing shareholders. The articles of association of the company provide that the directors may decline to register any transfer of shares to a person of whom they do not approve and may also decline to register any transfer of shares in which the company has a lien.

Held: (1) although if the directors had simply expressed their opinion it would not be for the court to examine or to inquire into the ground on which they had formed their opinion, in this case, the directors had exercised their power for a reason not empowered by the articles of the company and therefore this was an improper exercise by the directors of the powers vested in them;

(2) the second applicant had therefore a legal right in favour of his claim and the court must give effect to it by ordering the company to register the transfer.

Cases referred to:—

(1) *Re Hadleigh Castle Gold Mines, Ltd.* [1900] 2 Ch. 419.

(2) *In re Coalport China Co.* [1895] 2 Ch. 404.

(3) *In re Smith and Fawcett Ltd.* [1942] 1 Ch. 304.

(4) *Kesar Singh* v. *Sepang Omnibus Co. Ltd.* [1964] M.L.J. 122.

(5) *In re Bede Steam Shipping Co. Ltd.* [1917] 1 Ch. 123.

(6) *Re Bell Brothers* (1891), 65 L.T. 245, 246.

(7) *Re Gresham Life Assurance Society, Ex parte Penny* 28 L.T. Rep. N.S. 150.

(8) *The Ocean Coal Co. Ltd.* v. *The Powell Duffryn Steam Coal Co. Ltd.* [1932] 1 Ch. 655.